

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

James D. Rome Sudberry,

Case No. 3:24-cv-502

Plaintiff,

v.

ORDER

Warden Stuff, *et al.*,

Defendants.

Plaintiff James D. Rome Sudberry filed a motion to extend the deadline to appeal my dismissal of his civil rights action concerning his incarceration at Allen Oakwood Correctional Institution pursuant to 28 U.S.C. § 1915(c)(2). (Doc. No. 8). Sudberry also seeks to be released from prison on bond while he appeals. (*Id.* at 2).

A party seeking to appeal in a civil case must file a notice of appeal within 30 days of the entry of the judgment to be appealed. Fed. R. App. P. 4(a)(1)(A). A “district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.”

Fed. R. App. P. 4(a)(1)(B)(5)(A).

As Sudberry notes, I certified, pursuant to 28 U.S.C. § 1915(a)(3), that an in forma pauperis appeal of my dismissal of his complaint could not be taken in good faith. (Doc. No. 6 at 7).

Sudberry appears to contend that this finding is at odds with 28 U.S.C. § 1915(b)(4), which provides

that “[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil . . . judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.” But Sudberry is incorrect, because § 1915(a)(3) and § 1915(b)(4) address different issues. Section 1915(a)(3) acts to bar an incarcerated individual from taking an appeal without prepaying the appellate filing fee when the claims to be appealed have no merit. That was my finding in this case, and that is why I certified Sudberry could not appeal in good faith.

Sudberry has not shown excusable neglect or good cause to extend the appeal deadline and, therefore, I deny his motion. (Doc. No. 8).

I also deny Sudberry’s request for release on bond during any appeal, as he has not identified any basis upon which he might be released from prison while litigating his conditions of confinement.

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge